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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,964	12/14/2001	Heidi Riedel	Beiersdorf 755-KGB	7321

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EXAMINER

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 11/04/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Applicati n No.	Applicant(s)	
	10/016,964	RIEDEL ET AL.	
	Examin r	Art Unit	
	Lauren Q Wells	1617	

-- The MAILING DATE of this communication appears n the c ver sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-6 and 8-15 are pending. The Amendment filed 9/22/03, Paper No. 8, cancelled claim 7, and amended claims 1 and 5.

Applicant's arguments with respect to claims 1-6 and 8-15 have been considered but are moot in view of the new ground(s) of rejection. However, to the extent that the arguments may be relevant to the instant rejection, the Examiner will address them.

Applicant's arguments and amendments to the claims in the Amendment filed 9/22/03, Paper No. 8, is sufficient to overcome the 35 USC 112 rejections in the previous Office Action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Bellon et al. (FR 2789397).

Bellon et al. exemplify a facial foam comprising 22% PEG-100 stearate glyceryl stearate, 12% stearic acid, and 6% octyldodecanol, 5% glycerol, wherein nitrogen is added to the composition in 1-90% by volume. The claims recite a method of caring for skin comprising applying the composition to the skin. Thus, Bellone et al. and the instant invention both teach a method of preparing a foam, wherein the foam comprising 12% of at least one emulsifier A (stearic acid), 22% of at least one emulsifier B (PEG-100 stearate glyceryl stearate), 6% of at least one coemulsifier C (octyldodecanol), moisturizer (glycerol), and 1-90% by volume

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nitrogen, wherein the nitrogen is added to the composition comprising the emulsifier system.

See pgs. 11-12.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 11, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellon et al.

The instant invention is directed toward a self-foaming and/or foam-like cosmetic comprises 2-20% of an emulsifier system which consists of emulsifier A, emulsifier B, and emulsifier C, and 1-90% by volume of at least one gas.

Bellon et al. exemplify a facial foam comprising 22% PEG-100 stearate glyceryl stearate, 12% stearic acid, and 6% octyldodecanol, 5% glycerol, wherein nitrogen is added to the composition in 1-90% by volume. The claims recite a method of caring for skin comprising applying the composition to the skin. For the lipophilic phase, wherein PEG-100 stearate glyceryl stearate, stearic acid, and octyldodecnaol are lipophilic, comprises 5-25% of the composition as a whole, see page 5, bottom half of page or page 18, claim 2. The reference lacks a specific exemplification, wherein the amount is lipophilic phase is known, since the examples do not teach how much nitrogen is added to the composition, and lacks a ratio of A:B:C of 1:1:1.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to exemplify a composition wherein the lipophilic phase comprises 5-25% of the

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composition as a whole, using the teachings of Bellon et al. because of the expectation of achieving a cosmetically acceptable form of a foam that has a light texture and does not leave a residual greasy or sticky film.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to teach a ratio of A:B:C as 1:1:1 in the invention of Bellon et al. because it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellon et al. as applied to claims 1-6, 11, 13 and 15 above, and further in view of Synder (4,708,813).

Bellon et al. is applied as discussed above. The reference lacks a hydrophilic emulsifier.

Synder teaches a nonlathering cleansing mousse with skin conditioning benefits. Sorbitan monostearate is taught as a surfactant that provides skin cleansing benefits and imparts a uniform dispersion of emollient and other ingredients in the composition. Surfactants are disclosed as comprising 1.5-15% of the composition. See abstract; Col. 4, line 26-Col. 5, line 24.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the sorbitan monostearate of Synder to the composition of Bellone et al. because of the expectation of achieving a composition with greater skin cleansing benefits and which imparts uniformity to the emulsion.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bellone et al. as applied to claims 1-6, 11, 13 and 15 above, and further in view of Saint-Leger et al. (5,939,077).

Bellone et al. is applied as discussed above. The reference lacks carbon dioxide.

Saint-Leger et al. teach cosmetic compositions. Carbon dioxide and nitrogen are taught as interchangeable gases that are used in producing cosmetic foams. See Col. 4, lines 7-15.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the nitrogen of Bellone et al. for carbon dioxide because Saint-Leger et al. teach carbon dioxide and nitrogen as equivalent gases for use in producing cosmetic foams.

Response to Arguments

Applicant argues, "the sole pertinent example of Bellon is conceded by the Examiner to teach 40% of a combination of A+B+C, whereas the instant claims require a maximum of 20% of this same combination. Bellon says very little about the importance of the emulsifier". This argument is not persuasive. First, the Examiner respectfully points out that whether or not Bellon says a great deal or nothing about the importance of the emulsifier, he teaches the emulsifier system of the instant invention. Second, the Examiner respectfully points out that the percentage weights Applicant is relying upon is not the composition as a whole, but is the composition without nitrogen. As pointed out in the above rejection, Bellon teaches that the lipophilic phase, of which the emulsifiers are encompassed, comprises 5-25% of the composition as a whole.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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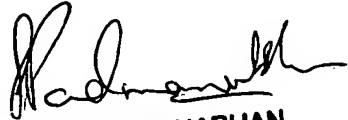
MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-4:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER
01/19/03